

**UNITED STATES DISTRICT COURT
IN THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

GLENN LACY DURHAM,
Petitioner

v.

RICK THALER,
Respondent

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Civil No. CC-09-256

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

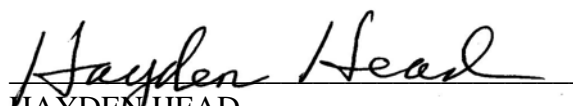
In this case, *pro se* Petitioner Glenn Lacy Durham (“Durham”) challenges the validity of his murder conviction in Kleberg County, Texas. Respondent moves for summary judgment that this Court lacks jurisdiction to consider Durham’s habeas petition because it is “second or successive” within the meaning of 28 U.S.C. §2244(b)(1). *See United States v. Key*, 205 F.3d 773, 774 (5th Cir. 2000). The United States Magistrate Judge recommends the Court grant Respondent’s motion and dismiss Durham’s petition without prejudice. Durham has filed no objection.

The Court regards such omission as Durham’s agreement with and acceptance of the Magistrate Judge’s findings. When no timely objection to the Magistrate Judge’s Memorandum and Recommendation is filed, the Court need only satisfy itself that there is no “clear error” on the face of the record in order to accept the Magistrate Judge’s recommendation. *Guillory v. PPG Industries, Inc.*, 434 F.3d 303, 308 (5th Cir. 2005) (citing *Douglass v. United Services Auto. Ass’n.*, 79 F.3d 1415, 1420 (5th Cir. 1996)). The Court finds no clear error in the Magistrate Judge’s memorandum and adopts her findings and conclusions.

Respondent's motion for summary judgment is GRANTED (D.E. 10). Durham's petition for habeas corpus relief is DISMISSED without prejudice for lack of jurisdiction. Durham may refile his petition with this Court *only* if he first receives an order from the Fifth Circuit Court of Appeals authorizing this Court to consider his petition. *See* 28 U.S.C. §2244(b)(3)(A).

Any request for a certificate of appealability is DENIED.

ORDERED March 5, 2010.


HAYDEN HEAD
SENIOR U.S. DISTRICT JUDGE